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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,242	12/20/2001	Ralph L. Anderson	KCX-462 (15879)	9073
22827	7590	12/06/2005	EXAMINER	
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			TORRES VELAZQUEZ, NORCA LIZ	
			ART UNIT	PAPER NUMBER
			1771	
DATE MAILED: 12/06/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/027,242	ANDERSON ET AL.	
	Examiner	Art Unit	
	Norca L. Torres-Velazquez	1771	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 September 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 58-75 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 58-75 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                                             |                                                                                         |
|---------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                        | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>101105</u> . | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments, see page 7 bridging page 8 of remarks, filed September 28, 2005, with respect to the ANNABLE reference have been fully considered and are persuasive. The 35 U.S.C. 103(a) of claims 39-44, 49-51, 55 and 56 over SUSKIND et al. in view of ANNABLE and ANDERSON et al. has been withdrawn. The ANNABLE reference is not available as prior art to the present application since both were subject to assignment to Kimberly-Clark Worldwide, Inc. at the time the invention was made.

2. Applicant's arguments filed September 28, 2005 have been fully considered but they are not persuasive.

a. Applicants have amended the claims by canceling claims 1-57 and presenting new claims 58-75. Applicants argue that the ANDERSON et al. reference does not disclose a composite fabric in which the nonwoven web is "creped" before hydraulic entanglement, as now claimed in the present claims. Applicants argue that creping the nonwoven web before hydraulic entanglement can open the pore structure of the nonwoven web and that this may facilitate hydraulic entangling, as well as provide increased permeability, stretchability in the machine and/or cross-machine directions, softness, and bulk. Further, that creping the nonwoven web before it is entangled with a fibrous component may also impart excellent liquid handling properties to the resulting entangled fabric.

It is the examiner's position that the nonwoven composite of the ANDERSON et al. reference is identical to or only slightly different than the composite fabric prepared by the method of the claim(s), because both composite fabrics have the same structural

similarities, i.e. are made from the same materials, both structures provide a nonwoven web hydroentangled with a fibrous material and the nonwoven web has a creped surface. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or an obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show unobvious differences between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292 (Fed. Cir. 1983). The ANDERSON et al. either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted Declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the ANDERSON et al. reference. It is further noted that Applicant's arguments with regards to the desirable properties obtained in the structure by creping the web before hydraulic entanglement are not commensurate in scope with the claims since the argued matter is not in the claims.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 58-75 are rejected under 35 U.S.C. 102(b) as being anticipated by ANDERSON et al. (WO 99/20821).

ANDERSON et al. related to a method of making a nonwoven composite material. The method includes the steps of: providing a hydraulically entangled web containing a fibrous component and a nonwoven layer of substantially continuous filaments, creping at least one side of the hydraulically entangled web. (Abstract) The reference teaches the use of their material in absorbent products such as industrial wipers. (page 1, line 10) The hydraulically entangled composite web includes more than about 50% of a fibrous component. The continuous filaments may be monocomponent filaments or they may be conjugate spun filaments. (Page 3, lines 28-40) The conjugate spun filaments may be splittable fibers. (Page 4, lines 2-3) The fibrous component could be pulp. The reference also teaches the use of synthetic fibers and staple length fibers added to the pulp fibers. These other fibrous materials may be "non-bonding fibers" and can be added to the web in an amount from about 5% to about 30% by weight. (Page 10, lines 16, 25-40) The reference teaches the use of polyesters, polyamides and polyolefins and blends thereof in the conjugate filaments. (Page 12, lines 9-12) The reference also teaches stretching or pulling the sheet after creping. (Page 18, lines 4-10)

It is the examiner's position that the nonwoven composite of the ANDERSON et al. reference is identical to or only slightly different than the composite fabric prepared by the method of the claim(s), because both composite fabrics have the same structural similarities, i.e. are made from the same materials, both structures provide a nonwoven web hydroentangled with a fibrous material and the nonwoven web has a creped surface. Even though product-by-process

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claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or an obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 964, 966 (Fed. Cir. 1985). The burden has been shifted to the applicant to show unobvious differences between the claimed product and the prior art product. *In re Marosi*, 218 USPQ 289, 292 (Fed. Cir. 1983). The ANDERSON et al. either anticipated or strongly suggested the claimed subject matter. It is noted that if the applicant intends to rely on Examples in the specification or in a submitted Declaration to show non-obviousness, the applicant should clearly state how the Examples of the present invention are commensurate in scope with the claims and how the Comparative Examples are commensurate in scope with the ANDERSON et al. reference.

### ***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 58-75 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 35-39, 41, 42, 47, 48-52,

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53, 54, 58, 59 and 62 of copending Application No. 10/328,846. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application comprise all the elements of the present application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

7. Claims 58-75 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of copending Application No. 10/328,450 in view of ANDERSON et al. (US 6,103,061). The copending application claims that the nonwoven web comprises monocomponent thermoplastic fibers instead of the presently claimed multicomponent thermoplastic fibers. ANDERSON '061 is directed to a method of making a nonwoven composite material similar in structure to the one in the copending application (refer to claims), and teaches the use of continuous filaments and that these may be monocomponent filaments or they may be conjugate spun filaments. (Col. 3, lines 43-50) Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the filaments of the copending application and provide the nonwoven with conjugate filaments (multicomponent) with the motivation of providing an alternate embodiment that will also produce an absorbent product with good bulk, a soft feel and high absorbency as disclosed by ANDERSON et al. '061 (Col. 1, lines 16-17)

This is a provisional obviousness-type double patenting rejection.

8. Claims 58-75 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 35-37, 40-42 and 44 of copending Application No. 10/744,606. Although the conflicting claims are not identical, they

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are not patentably distinct from each other because the claims of the copending application comprise all the elements of the present application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-1484. The examiner can normally be reached on Monday-Thursday 8:00-5:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Norca L. Torres-Velazquez  
Primary Examiner  
Art Unit 1771

November 29, 2005